

BEFORE THE ARBITRATOR

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In the Matter of the Petition of

INTERNATIONAL ASSOCIATION OF FIRE  
FIGHTERS, LOCAL 226, AFL-CIO

For Final and Binding Arbitration  
Involving Firefighting Personnel  
in the Employ of

Case 64  
No. 48782 MIA-1795  
Decision No. 27642-A

CITY OF MARINETTE

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Appearances:

Murphy & Teasdale, Attorneys at Law, by Clay F. Teasdale,  
appearing on behalf of the Union.

Godfrey & Kahn, S. C., Attorneys at Law, by Robert W. Burns,  
appearing on behalf of the Employer.

INTEREST ARBITRATION AWARD

International Association of Fire Fighters, Local 226, AFL-CIO, (herein "Union") having filed a petition to initiate interest arbitration pursuant to Section 111.77, Wis. Stats., with the Wisconsin Employment Relations Commission (herein "WERC"), with respect to an impasse between it and City of Marinette (herein "Employer"); and the WERC having appointed the Undersigned as arbitrator to hear and decide the dispute specified below by order dated August 25, 1993; and the Undersigned having held a hearing in Marinette, Wisconsin, on November 29, 1993; and each party having filed post hearing briefs, the last of which was received February 15, 1994.

ISSUES

The parties final offers state the issues in dispute. The following is a summary of the issues with respect to the parties' calendar 1993 and 1994 agreement:

1. Wages: The Employer proposes a 3.5% across-the-board increase effective January 1, 1993 and a 3.5% across-the-board increase January 1, 1994. The Union adds to the above increases "parity" increases of 1% each January 1, 1993, July 1, 1993, January 1, 1994 and July 1, 1994.

POSITIONS OF THE PARTIES

The Union asserts that the sole dispute in this case is the 1% additional across-the-board wage increases. The Union concedes

that all other bargaining units in the City of Marinette received the same 3.5% increases as proposed by the Employer herein. The Union's reason for seeking the additional increase is to continue the parties' alleged past practice of granting such increases for the purpose of eventually achieving parity between police and firefighters. The Union notes that the Fire Captain has achieved parity with the Police Lieutenants and that the Fire and Police Chiefs will achieve parity in 1994. It notes that the public has an interest in a properly paid fire department and granting parity, particularly in the light of the Employer's actions with respect to supervisors, will maintain the pride and morale of the department. The Union denies that the Employer has met its burden to demonstrate any inability to pay and, therefore, the Union does not see ability to pay as an issue in the case. Further, it argues that since there is an "established pattern" of additional increases toward parity in prior years, the Employer should be required to bear the burden of establishing that a change in that practice is appropriate. The Employer has not offered a "buyout" of this practice. The Union notes that internal comparisons are more important than external comparisons where there is an internal inequity between police and fire salaries. The Union has offered external comparisons. It has selected the cities of: Antigo, Chippewa Falls, Rhinelander, Ashland, Menasha, Merrill, Oconto, Rice Lake, and Two Rivers. It has based these comparisons on average assessed value, population, number of personnel, average income, and number of firefighters per 1,000 population. [The Union excluded Watertown because of its proximity to Milwaukee.] Based upon these comparisons, it notes that either offer would maintain the relative position of this unit as compared to the other comparable communities. The Union also relies upon the "other factor" criterion in that the Employer has added HAZMAT responsibilities to this unit including responses throughout the county outside the city.

The Employer mainly relies upon comparison to like fire fighting units in comparable communities and comparison to the general increase given other units of the city. The Employer relies upon Allouez, De Pere, Kaukauna, Sturgeon Bay and Two Rivers for external comparison based upon their proximity, size, and common economic characteristics. Based upon the external comparisons, it notes that Marinette Fire Fighters are already well paid. Further, it notes that its offer is consistent with the settlements with all of the other bargaining units of the city. In its view, allowing this unit to obtain a wage increase inconsistent with the pattern of settlement will impede the possibility of ever reaching voluntary settlements with other bargaining units.

The Employer also argues that the Union has the burden to prove that parity is an appropriate basis for the adoption of its offer. The Employer argues that the pay practice of other comparable municipalities does not support the Union's position in

that none of the comparable communities have internal parity between police and fire positions; some have college and/or job requirements which make police and fire positions more closely comparable in those communities than in Marinette and few grant fire fighters increases different than those for police officers. The Employer offered testimony to establish that Marinette Fire Fighters are dissimilar to Marinette Police Officers. The duties are different. The schedules are different. The fire positions require only a high school degree and limited training, whereas the police positions require an associate degree. The other performance and hiring criteria are greater for police officers and police officers have a much more active and intense number of responses. Historically, the fire unit has always received less than the police unit. Similarly, it denies that the Union has established that the addition of HAZMAT responsibilities to the department justifies its offer.

The Employer offered testimony that its purpose in making wage adjustments in addition to the general increase for fire fighters in past years was to narrow the gap between fire and police positions and not to ultimately establish parity. In any event, additional wage increases are not justified in this year because the Employer is reducing its non-unit staff in order to keep its budget fiscally responsible. Further, the Employer argues that the Union's reliance upon the increases given supervisory fire personnel to equate them to similar police personnel, is unreasonable in that the supervisory responsibilities of these positions do make them the same as similar police positions. The Employer also notes that its offer is clearly supported by the cost of living.

#### DISCUSSION

The function of the arbitrator is to select the final offer of that party which is closest to being the most appropriate. The arbitrator is not authorized to modify the final offers of the parties. The arbitrator is to determine which offer is closest to appropriate by applying evaluating the offers in the light of statutory standards which are specified in Section 111.77, Wis. Stats., as follows:

- a. The lawful authority of the municipal employer.
- b. Stipulations of the parties.
- c. The interests and welfare of the public and the financial ability of the unit of government to meet these costs.
- d. Comparison of wages hours, and conditions of employment of the employes involved in the arbitration proceeding with the wages, hours and conditions of employment of other employes performing similar services and with other

employees generally:

1. In public employment in comparable communities.
  2. In private employment in comparable communities.
- e. The average consumer prices for goods and services, commonly known as the cost of living.
  - f. The overall compensation presently received by the employes, including direct wage compensation, vacation, holidays and excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.
  - g. Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.
  - h. Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact finding, arbitration, or otherwise between parties, in the public service or in private employment.

The weight to be assigned any one factor is a matter which is left to the arbitrator's discretion.

#### Bargaining History

The main issue in this case is the effect of the bargaining history on the result in this case. The history of negotiations in the disputed year and the history of prior collective bargaining agreements is generally one of the "other factors" traditionally considered in interest arbitration as specified in factor h. Indeed, for example, it is expressly a factor for consideration under Iowa's interest arbitration law.<sup>1</sup> A prime policy consideration in evaluating any bargaining history is maintaining an atmosphere conducive to voluntary settlements.

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<sup>1</sup>Sec. 20.22 (9), Iowa Code, provides in relevant part: "The panel of arbitrators shall consider, in addition to any other relevant factors, the following factors:

a. Past collective bargaining contracts between the parties including the bargaining that led up to such contracts. ...."

The record does not reveal that there ever was a time that police officer and firefighter salaries were equal. In all prior negotiations, this unit and all other units regularly voluntarily settled for wage increases of the same percentage. In 1989, the Union first made efforts in negotiations to obtain parity between firefighters and police officers and also parity for unit fire lieutenants with police sergeants. At the same time, the fire supervisory unit sought parity between fire captains and police lieutenants. In the last two prior agreements (1989 and 1990, 1991 and 1992), all other units settled on the same percentage general wage increase; however, this unit and the supervisory fire unit alone received additional wage increases. At the same time, the Employer made supplemental adjustments to the non-unit fire chief to equate that salary to the police chief's. In 1989, the parties agreed upon a token additional \$100 per year for the firefighter wage increase and the same percentage increase as other city units. At the same time the same parties agreed upon a either a \$1,000 flat additional adjustment or 4% wage adjustment for the fire lieutenant in addition to the general wage increase for 1989. In 1990, both received the city-wide general increase. In 1989, the supervisory unit agreed to 2.7% in addition to the city-wide general increase and 2.3% in 1990 in addition to the city-wide general increase. As of 1990, the fire captain and police lieutenant had the same wage rate. In both 1989 and again in 1990, the Employer granted the fire chief wage increases of 3.5% above the general wage increase. [A newspaper article from the time indicates that the Fire Chief was in the supervisors unit, but had agreed to be removed from that unit as a quid pro quo for the increase.]

In the negotiations leading to the calendar 1991 and 1992 agreement, the Union sought to close the 10% wage differential between fire fighter and police officer by entering into a ten year agreement with increases of 2% over those afforded police officers in each year of the agreement. The parties agreed upon a two year agreement. In that agreement both firefighters and fire lieutenants received 2% in each year in addition to the city-wide agreement. In a letter confirming the tentative settlement for that contract, the Employer stated that the increase was "...an effort to move to parity between Firefighters and Police Patrolmen and Fire Lieutenants and Police Sergeants ...". The fire chief did not receive an increase above the city-side increase even though there was a disparity with the police chief's salary.

The Employer's proposal herein is the same increase it has granted to each of its other units in both years of this agreement. Under the Employer offer, the fire fighter would move from \$1,749 per year less than the police officer to \$1,873.07 less than the police officer, while the fire lieutenant would move from \$1,507.68 to \$1,615.06 less than the police sergeant. The Union's proposal would move the firefighter to \$637.65 less and the lieutenant \$284.38 less. The Employer has made a 3.6% additional adjustment

to the fire chief's salary above the city-wide increase to bring the fire chief's salary equal to that of the police chief in 1994.

Agreements to make expensive or difficult changes over a period of collective bargaining agreements are very important to the collective bargaining process because they facilitate those changes at practical cost. These agreements are not binding when they exceed the statutory maximum length of collective bargaining agreements. However, the maintenance of the trust between the parties is an important factor which facilitates voluntary resolution of collective bargaining agreements. Thus, when parties have entered into those agreements, arbitrators usually require that the party breaking the agreement establish a legitimate reason for doing so. There is a major difference between that type of agreement and a settlement taking into account one or the other party's heartfelt position that such a change is warranted. In the latter case, the past settlement is but one factor to be given weight as appropriate in evaluating a proposal for a successor agreement. The distinction is important if such voluntary commitments are to be facilitated.

Contrary to the position of the Union, the evidence does not establish that the Employer ever made such a voluntary commitment. In the 1991-92 negotiations, the Employer specifically rejected a five year agreement. The letter confirming the parties settlement is not a commitment to make changes in future years (although it is some recognition of the legitimacy of the Union's argument) and there was no other express agreement that the Employer would establish parity at any time. In addition, there was no specific quid pro quo for the alleged agreement. Even Union witnesses admitted that they understood that the Employer was not making an express commitment for the years following the 1991-2 agreement. However, for the reasons discussed below, I conclude that the past approach of the Employer is entitled to substantial weight in this proceeding.

#### Internal Comparisons

The Employer has offered this bargaining unit the same general increase which every other bargaining unit has voluntarily accepted in both years of the agreement. This factor favors the Employer.

Police and fire positions both are public safety positions involving a substantial personal risk for the employee. Police and fire positions also work rotating shifts covering all nights and weekends; however, they are substantially different. The hiring qualifications are different and employees are not recruited simultaneously. There is no history that wage rates were ever the same between police and fire positions. The duties of police officers and firefighters are different.

The Union did not present any direct evidence concerning the

comparable worth of the police and fire positions, except that they share the risks of public safety jobs. Accordingly, no decision can really be made directly on that point. Accordingly, the external wage rate comparisons are entitled to more weight in this proceeding.

The Employer's conduct in the past negotiations tends to suggest that it has recognized the two has having some degree of comparable worth or ratio of worth. In this regard the Employer's conduct of granting the fire chief an extraordinary salary increase to make his salary consistent with the police chief's bears significant weight. While the Employer has asserted that it did this because their supervisory responsibilities made their positions of equal value, there is no direct evidence that it has ever made any personnel studies to reach that conclusion. Further, there is no evidence that it has any pay plan which relates any other department heads' salaries to each other. Many other department heads of large departments are paid less. Thus, the only believable view of this action is that it was at least based upon the Employer's continuing view that police and fire positions do have some degree of comparable worth. This is given weight in applying the external comparisons.

#### External Comparisons

The Employer has properly argued that it is difficult to find communities closely comparable to Marinette. It has properly included some communities from the Fox River Valley and those having economies related to the Great Lakes. All of the communities offered by the Employer are comparable or likely to pay their employees more than Marinette does. Some of the communities the Union has used are too distant and/or different to be useful comparisons; Chippewa Falls, Antigo, and Rice Lake. Oconto is too small to be comparable. In the context of looking at communities of similar size with similar characteristics Merrill, Ashland, Rhinelander and Menasha might be comparable. However, I have not used them in the following comparison because only the Employer supplied data sufficient to compare police and fire fighters among its comparables. As noted above, the Employer's inclusion of DePere, Allouez, and Kaukana is likely to be more favorable to the Union than some of the comparisons it offered because of their close proximity to the Green Bay metropolitan area. Thus, the Employer's comparison group is adequate for the purposes of this award. The following is a comparison of firefighter maximum wage rates and patrolman maximum wage rates among the comparisons offered by the Employer for 1992.

1992 maximum wage firefighter annual rate without longevity compared to same for police

	fire	rank	police	rank	diff.
Allouez	32,690	2	33,881	2	-1,193
DePere	33,842	1	35,040	1	-1,198
Kaukana	28,083	4	29,278	4	-1,195
Sturgeon Bay	26,441	5	26,557	5	- 116
Two Rivers	26,021	6	26,222	6	- 201
Average	29,415		30,196		- 781
Marinette	28,403	3	30,153	3	-1,750
difference	-1,012		- 43		

[Averages are recomputed.]

The wage rate comparison shows that Marinette firefighters are paid considerably less than average while Marinette police officers are paid close to the average of police salaries among the comparable group. None of the comparison cities has a program of parity between police officers and firefighters. The group is evenly split between those which pay nearly the same and those which have significant differences between police and fire wages. The wage rate comparison favors the Union's position because it suggests that firefighters in Marinette are somewhat underpaid and that there is some inequity between the way Marinette pays its police officers and the way Marinette pays its firefighters.

To the extent that data is available, the general wage increase comparisons for both 1993 and 1994 to this same group is nearly equivalent to the wage increase offer of the Employer herein. To this limited extent the external comparisons strongly favor the position of the Employer. However, taking into account the fact that the Employer has previously been making additional increases to fire wages to reduce inequities perceived by the Employer, the external comparison factor favors the Union position.

#### Cost of Living and National Private Sector Comparisons

The Employer's proposal exceeds the most recent available cost of living wage earner index for small urban areas. The Employer offer tends to exceed BNA's most recent report of first year increases in major national collective bargaining agreements. These factors favor the position of the Employer.

#### Ability to Pay

The Employer has the ability to meet the Union's offer. It has argued that it has been under very difficult budget constraints which were not specifically articulated. Over the last 2.5 years it has reduced its management staff by four positions. It has eliminated some positions in other bargaining units. Thus, its

budget position appears to be tighter than in previous years, but it is not clear why it is that way or how much different it is. The approach proposed by the Union, if otherwise appropriate, is an adequate method of holding down costs while correcting inequities as demonstrated by the parties' past agreements, but may be somewhat more costly than would be appropriate in these circumstances.

#### Conclusions

The available evidence suggests that firefighters in Marinette are underpaid when compared to comparable firefighters, while police salaries are relatively comparably paid to police officers in the same comparison communities. The Employer has made inequity adjustments to fire salaries in past agreements on the basis of parity and the proposal of the Association is closer to the amount of adjustment needed to resolve the inequity and is of an amount similar to that made in the past. Given the Employer's adjustment of the fire chief's salary this year, it is more likely that the Union's offer is closer to the appropriate amount of adjustment this year than the Employer's. The Employer has correctly expressed its concern that granting this unit a larger increase than other units would frustrate its ability to reach voluntary settlements with other collective bargaining units in the future. However, as noted, that concern is outweighed in this case by the fact that there is a substantial inequity in the pay of the fire unit. Accordingly, the final offer of the Union is preferred.

#### AWARD

That the parties' agreement include the final offer of the Union.

Dated at Milwaukee, Wisconsin, this 12th day of April, 1994.

  
Stanley H. Michelstetter II  
Arbitrator